IN THE SUPREME COURT OF PUERTO RICO

Civil Action Party

Petitioner

vs. NO. AC-1999-20 Certiorari

Commonwealth of Puerto Rico, et al

Appellee

JUDGMENT

San Juan, Puerto Rico, April 25, 2000.

Based on the foundations set forth on the preceding opinion, which is made an integral part of the document at hand, we deny the Motion to Reconsider.

It is so pronounced and ordered by the Supreme Court and certified by the Clerk by the Supreme Court. Associate Justice Negrón Garcia issued the Dissenting Opinion. Associate Judge Naveira de Rodón dissented without written opinion.

[signed]
Isabel Llompart Zeno
Secretary of the Supreme Court

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JUDGMENT

San Juan, Puerto Rico, April 25, 2000.

We rule the Motion for Reconsider presented by the Civil Action Party of our Judgement in *Civil Action Party v. Estado Libre Asociado, et al,* res. February 25, 2000, 2000 T.S.P.R. 29, which sustained the constitutionality of Articles 3.001(3) and 3.002 of the Electoral Act, Act No. 4 of December 20, 1977, as amended. 16 L.P.R.A. ss. 3101(3) and 3102. With the benefit of the appearance of the parties to the oral argument, as well as the pleadings and documents submitted, we deny the Motion for Reconsideration.

I

On February 25, 2000, by the Court's Opinion, we sustained the constitutionality of Articles 3.001(3) and 3.002 of the Electoral Law, Law No. 4 of December 20, 1977, as amended. 16 L.P.R.A. ss. 3101(3) and 3102. We

conclude that such provisions requiring a notary to certify the endorsements for political groups aspiring to become parties by petition, and that the petitions be presented before the State Elections Commission within seven days of collection, do not violate the constitutional doctrine of access to ballot. In addition, we state that the referred provisions do not violate the Equal Protection clause, either.

In a timely fashion, the Civil Action Party filed a Motion for Reconsideration in which it requested us to declare the unconstitutionality of the challenged provisions for considering, as a constitutional minimum, the application of *Meyer v. Grant*, 486 U.S. 414 (1988) and *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999).

In addition, they filed a Request for Oral Argument, to which we agreed. Simultaneously, we granted the parties a term to appear and enlighten this Curia, regarding the alternate remedies and the feasibility of officials to notarize the endorsements for petition.

In its appearance before us, the Civil Action Party argued that under *Meyer, supra* and *Buckley, supra*, the only alternate mechanism constitutionally allowable is the use of volunteers who are not attorneys for the collection and notarization of the endorsements.

The Commonwealth and the State Elections Commission pointed out that, in attention to the important interest of addressing the integrity of the electoral process, only officials with a degree of veracity on the certifications they notarize which was analogous to a notary public, could be considered as alternate officials in the

notarization of the endorsements for parties by petition. Such officials are, according to the Attorney General and to the State Elections Commission, the judges of the Judicial Branch and the Clerks of the Courts.

They also pointed out the consequences that new political parties represent to the financing and operation of the Puerto Rican electoral apparatus. According to the Commission, the operational cost of the electoral system is approximately forty million dollars for each Party during a four year term and each new Party represents another amount. This quantity is deducted from the Electoral Fund, in addition to the operational costs that each new Party implies: an Electoral Commissioner with its assistants; a representative on each one of the Permanent Registration Boards, with their equipment and work space, eight supervisors and the personnel of balance.[1]

In regards the electoral history of the Civil Action Party, the Commission certified that the Civil Action Party had been certified on May 20, 1998, and by March 25, 2000 only thirty five (35) endorsements had been filed, from which thirty (30) were validated and five (5) were rejected.

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[1] During the Oral Hearing, the Court ordered the State Elections Commission to submit documents relevant to the budget of the Commission and regarding the groups requesting to be certified, to begin the registration process as a Party by Petition since 1983 to the present.

From the documents submitted by the Commission in compliance of the Order, it appears that the annual cost of representation of a political Party in the different structures of the Commission is $5,600,477.00 for each non-election year and $13,800,477.00 for each pre-election year.

The Commission also certified the Social Unity Labor Party, which was certified on March 15, 1998, two months before the Civil Action Party, by March 29, 2000, had presented a total of 33,769 endorsements, from which 29,894 were validated, 1,139 were rejected and 2,736 were pending their validation.

II

The hearing requested by the Civil Action Party took place on March 31, 2000. The parties had the opportunity to make their exposition, as well as to answer the questions submitted by this Curia, and to refute the argument presented by the other Party.

The purpose of holding this hearing was to give the Civil Action Party the opportunity to show the actions taken in the registration process, so that, in accordance with their efforts, we could re-examine whether the requirement of the notary intervention is severe or onerous.

Cautiously examining the appearance of the Civil Action Party, as well as their answers to our questions, and their expressions on the rebuttal turn, it is unavoidable to conclude that it has not demonstrated that a reasonable diligence was done to obtain the registration of the Party. Further, the record shows an absence of minimal degree of effort, as well as a tendency to depend exclusively in litigation, with the purpose of obtaining the registration of the Party.

(A) Endorsement collection

During the hearing, the Court specifically inquired about the steps and efforts made by the Civil Action Party to achieve its registration.

One of the principal arguments of the Civil Action Party was that the actual system prevents the president of the Party or his family and friends to collect the endorsements, since the notaries are the ones who do this. It indicated it had six (6) sworn statements from lawyers sustaining that it would be onerous for them to abandon their practice in order to authenticate the required endorsements. The State Elections Commissions pointed out that the Civil Action Party did not provide evidence that the endorsements could not be collected because the notaries refused to do it.

On the other hand, the Commission distinguished between the collection of endorsements and the authentication of the signatures of the endorsees. The members or volunteers of the Party may request or collect the petitions, nothing prevents them from doing so. Now, once the endorsee agrees to grant the endorsement, they have to sign it in the presence of a notary public.

The Commission pointed out, and the Civil Action Party accepted, that as of the date of the hearing, the Party had only submitted thirty (30) valid petitions to the Commission. Such petitions were submitted on September, 1998. The attorney for the Civil Action Party clarified that he was the person who collected and notarized the petitions during a period of four hours. The Civil Action Party accepted that, from that date on, no action was

taken to obtain other endorsements, focusing its efforts in challenging the validity of the Electoral Law in court.

The State Commission also stated that even though this Court acknowledged the right of the Civil Action Party to obtain, by payment, copy of the electoral lists, *Civil Action Party v. Comision Estatal de Elecciones*, res. September 27, 1999, 99 T.S.P.R. 145, from the date of the hearing, the Party had not requested them from the Commission[2]. The Civil Action Party responded that they did not request for the electoral lists because of their cost, and the fact that this matter was intimately related to the issue in the case before this court.

(B) The electoral basis of the Civil Action Party

The Court inquired about the electoral basis of the Civil Action Party, that is, the popular support of the political group. The Civil Action Party stated that in Puerto Rico, there are four hundred thousand (400,000) non-registered voters who could constitute its support or electoral basis. They also stated that because its platform promotes the formula of free association, they could count on the support of four thousand (4,000) of the voters who voted for this alternative in the 1999 plebiscite. Finally, it stated that, a survey, which took

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[2] The legal representative of the Civil Action Party argued that they had not gathered the electoral lists because the Commission was charging them eight thousand dollars ($8,000.00) for them. The legal representative of the Commission answered that, that was the amount that was collected from anyone requesting the lists and that such was the amount of the cost for reproducing them.

place before the 1998 plebiscite, revealed that the free association formula counted with the support of fifteen percent (15%) of those surveyed.

On the other hand, the State Elections Commission pointed out that the Civil Action Party, in addition to only submitting thirty endorsements, did not even file a list of the voters supporting them, as evidence of their electoral power[3].

(C) The difference in the regulation of candidates for primaries or independent candidates and the political groups interested in registering as a political Party.

The Civil Action Party requested to be able to use *ad hoc* notaries for the certification of the petitions. The Court inquired what were the reasons to allow the utilization of *ad hoc* notaries in the case of candidates for primaries and independent candidates, and not in the case of parties by petition.

The Commission pointed out that there is a fundamental difference between the consequences that each process entails. The fundamental difference rests upon the groups wishing to be certified as political parties, once they submit the correspondent endorsements and are validated, they have some rights and prerogatives that a independent candidate or a candidate for primaries

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[3] We must state that the only thing on record that we could interpret as evidence of the popular support the Civil Action Party has are ten sworn statements of persons who are members of the Civil Action Party wherein they stated that they were willing to collect endorsements to register the Party.

does not have. They stated that it is important to emphasize the fact that once a Party achieves its registration, they have a right to public funds. For example, they have the right to participate of the Electoral Fund[4], they have the right to an Electoral Commissioner and to a representative in each of the Permanent Registration Boards, employees whose salaries are paid out with public funds. They pointed out that, that was so, because in Puerto Rico, as opposed to other American states, the political parties are subsidized with public funds.[5] On the contrary, a candidate for primaries or an independent candidate does not have such rights.

The State Elections Commission also stated that the difference in the treatment is justified because the term that the independent candidates and candidates for primaries have to submit the endorsements required by law is two months. On the contrary, the political groups aspiring to the certification as a political Party have a period of three and a half years to submit the correspondent endorsements.

Finally, the Commission indicated that the only sieve that exists in the case of endorsements for political groups in the process of registration as a Party, is the

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[4] In spite of the various occasions during the Hearing that the Civil Action Party stated the need and importance to participate in the Electoral Fund, client to waive its participation in the Electoral Fund [sic].

[5] The Commission reiterated, in its argumentative exposition what it had stated during its appearance regarding the cost that a new party represents to the public treasury.

certification by the notary. In contrast, regarding the candidates for primaries and independent candidates, there are certain sieves or additional filters. That is, for example, in the case of candidates for primaries, the Party to which it pertains is already a registered Party, that is, they have support from the voters. The candidate for primaries goes through, in first place, the internal process of its Party, in which he or she has to demonstrate that they count with a significant support through the votes of the voters of that Party. If they are victorious in the primaries they go through the final sieve of the general elections.

(D) Remedy Requested

The Civil Action Party expressly rejected the remedy that the judges or clerks of the court authenticate the signatures of the endorsees. They also rejected the alternative proposed in the Dissenting Vote of the Associate Justice Negrón Garcia in *Civil Action Party v. E.L.A.*, Judgment entered on October 27, 1999, 99 T.S.P.R. 163, to use employees from the Permanent Registration Boards of the Commission to act as *ad hoc* notaries. The Civil Action Party requested permission to certify the endorsements by members of the Party, without the need of notaries or public officials to intervene in the process. It rationalized that the State has various mechanisms to fight fraud, such as the penal judgement for fraud or perjury and the possible disqualification of the candidate or Party that obtains the registration fraudulently.

III

By a detailed examination of the record, as well as the appearance of the Civil Action Party at the Oral Hearing this March 31, it is imperative that we conclude that the Civil Action Party has not demonstrated having a genuine interest in achieving the registration of its group as a Party.

Several facts move us to this conclusion: that in the period since its certification until today, it has submitted before the Commission thirty (30) validated endorsements, which, by its own admission, were certified by only one notary during the period of four hours; that after litigating the matter of the electoral lists before this Court, with the effort and cost that it entails as much to the parties as to the judicial system, the copies have not been claimed; the absence of a list of registered voters willing to endorse the Party; the "resignation" at the last minute and as a last resource to the participation of the Electoral Fund; its refusal to consider alternate mechanisms to the certification of the endorsements by notaries, that being public officials, have a higher degree of reliability than the members of their own Party. All this, makes us determine that the Civil Action Party has not shown a reasonable diligence in the defense of the concrete interest it seeks to litigate.

The petitions of endorsement presented by the Civil Action Party before the Commission represent. 003% of the 97,784 endorsements required for its registration. Using the numbers submitted by the legal representative of the Civil Action Party, so that in four hours, he collected and notarized thirty (30) valid endorsements, a

simple mathematical calculation shows that nine (9) notaries certifying endorsements during eight (8) hours a week, would have been able to notarize 98,280 endorsements during a period of three and a half years, term required by the Electoral Law for the registration of Parties by Petition.

We also want to point out that, in Puerto Rico, there are one hundred and four (104) electoral precincts. Just by using two notaries per precinct and each one certifying five hundred endorsements to collect 104,000 endorsements, exceeds the number of endorsements required. For this assignment, they would count on, of course, three years and a half required by the Electoral Law.

Also, from the evidence presented in the hearing, we conclude that the electoral basis which the Civil Action Party alleges it has is abstract and hypothetical. With the exception of ten sworn statements on record, in which ten members of the Party express their willingness to collect endorsements, the Civil Action Party has not demonstrated that it has the support of identifiable persons or groups, which is necessary for any political group aspiring to become a political Party and present their candidates to the nation.

IV

Finally, it is our duty to analyze the argument of the Civil Action Party, in which the federal cases *Meyer, supra* and *Buckley, supra*, apply to this case. We conclude that such jurisprudence does not support the thesis of the Civil Action Party, and is clearly distinguishable from the

situation before us. We should state that, as opposed to the case at hand, in *Meyer, supra* and *Buckley, supra,* the Petitioners presented extensive evidence before the Court of First Instance, with the purpose of demonstrating the efforts made, and how the challenged requisites were extremely onerous.

The cited jurisprudence is not about the regulation of political associations in its effort to achieve access to the ballot, but to the regulation of proposals of citizen initiative, as allowed in the state of Colorado[6]. In both cases, the Federal Supreme Court invalidated certain requirements demanded from the collectors of endorsements for initiatives of popular legislation, considering that they violated the right of free speech guaranteed by the First Amendment of the Federal Constitution.

In *Meyer, supra* as well as in *Buckley, supra,* the Court concluded that the restrictions imposed significantly restricted the communication with the possible voters, since it, impermissibly, violated the direct political communication (one on one communication), limited the number of persons who could carry out the involved

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[6] In *Meyer, supra,* the Federal Supreme Court invalidated a provision that prohibited the collectors of endorsements to lobby for popular legislative initiatives receiving financial compensation. In *Buckley, supra,* the requirement for the endorsement collectors to lobby for popular legislative initiatives to be registered voters; to be required to use clothing identifying their names; and that obligated the proponents of the popular legislation to report the name and address of the endorsement collectors and the amount of money paid for their work.

political message, and consequently, limited the audience to which the message could reach.

In the case before us, the challenged provisions do not restrict the freedom of speech of the members of the Civil Action Party. There is nothing in them that imposes restrictions regarding the persons who can carry out the political message outlined by such Party to convince the registered voters to endorse the petitions for registration, or who can act as collectors of endorsements. The members of the Party have complete liberty to make the expressions they believe necessary, as well as to broadcast its political message by the means they consider convenient. Likewise, nothing prevents them from directly communicating with possible voters, that is, to approach possible voters to communicate their political platform, request their support and ask them to fill out the endorsement petitions. All of these functions, which are an integral and central part of the political expression, are available to all members of the Party; they are not restricted to the notaries.

By statutory provision, the function of the notary is not limited to the oath of the petitions for registration. That is, the intervention of the notary is limited to the form in which the endorsement should be carried out. The members of the Civil Action Party, may fully exercise their right to political expression, contrary to *Buckley, supra*. They are not prevented to approach citizens to transmit their political message and try to obtain their support to achieve the registration of the Party. In fact, there is no requirement limiting the capacity of the member of the Party to fill out and collect the necessary endorsements, with all the pertinent information, except

for the signature of the person. Once the citizen shows his desire to help in the registration, it corresponds to the collectors of the Civil Action Party, in accordance with the requirement of the Electoral Law, to make the actions so that the endorsement is notarized.[7]

In the case of *Buckley, supra*, the Concurrent Opinions of Judge Thomas and Judge O'Connor, to which Judge Breyer joined, acknowledge that there is a difference between the provisions having the effect of directly regulating the communicative aspect of the petitions, and those which merely regulate the mechanisms of the electoral process. *Id.* Pages 208 and 214.

> Some regulations govern the electoral process by directing the manner in which an initiative proposal qualifies for placement on the ballot. These latter regulations may indirectly burden speech but are a step removed from the communicative aspect of petitioning and are necessary to maintain an orderly electoral process. Accordingly, these regulations should be subjected to a lesser standard of review. Id. Pages 214. (O'Connor, Op. Concurrente)

Furthermore, the Opinion of the Court in *Buckley, supra*, acknowledged that the existence of a substantial regulation of the electoral process is necessary, if it is

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[7] For this, they can use different methods: they may either send or take the voters to the offices of the notaries, they may have a notary go with them in endorsement collection campaigns; they may place themselves together with other personnel carrying the political message and requesting endorsements in strategic places and with public access, and they may have notaries swear the endorsements simultaneously, etc.

going to be a fair and honest one, and that the states have ample discretion to protect the integrity of the electoral process. *Id.* Pages 185 and 191. It expressly pointed out that, citing the preceding jurisprudence, the risk of fraud and corruption existing in the election of candidates, is not present in the votes of popular legislation proposals. *Id.*, page 203.

V

In attention to the aforementioned, we confirm our preceding determination that the challenged provisions of the Electoral Law do not have any constitutional defect.

Furthermore, the documents presented by the State Elections Commission in compliance with the Order given in the Oral Hearing by this Court, show that the challenged provisions are not as onerous as to prevent a political group from **demonstrating a reasonable degree of diligence**, to achieve access to the ballot.

According to the Statement Report of Parties by Petition filed before this Court this last April 5, since 1983 to the present, ten political associations requested their certification before the Commission to start the registration process as a Party. From these ten, three achieved their registration and participated in the electoral process: Puerto Rican Renovation Party, island-wide in the elections of 1984, Local Viequense Movement as a local Party in the elections of 1992, and the Frente Unido Riograndeno Party as a local Party in the elections of 1996.

Out of the seven remaining political associations, one, Democratic Representative Interest Party, has not been able to achieve the certification of its name and emblem, this matter still pending litigation in the courts. In relation to the other six political groups, two are presently pending their registration: Social Unity Workers Party which has filed 34,561 endorsements, and the Civil Action Party which has filed 35 endorsements.

The remaining four political associations did not achieve their registration to participate in the 1996 elections. Out of these four, it is necessary to point out that three of them did not file any petition whatsoever: Alternative Party, which was authorized to collect endorsements in December, 1993, National Union Party and the Puerto Ricans for Puerto Rico Party, which were authorized to collect endorsements on February, 1996. The remaining group, Puerto Rico Reformist Party, which was authorized to collect endorsements on October, 1993, presented 1,248 petitions out of the required 94,094, meaning a 1.32% of the required endorsements, in spite of having more than two and a half years to show that it had the voters support.

We should also, take into consideration, the fact that the State subsidizes the political parties through the Electoral Fund, and the cost that the participation of each Party's operational scheme of the State Elections Commission entails. In our jurisdiction, once the political groups achieve their registration as a Party, they have the right to participate in the Electoral Fund. Such amount is fixed by law, regardless of the amount that the Party can collect on its own. That is, once the number of required

endorsements is satisfied, the parties participate in equal conditions.

Even though there are diverse mechanisms of public financing for the campaign, in our case, the system provides funds in political block to the registered parties. With the purpose of guaranteeing that the subsidy is used only by the political groups that have real power to summon our voters, the Electoral Law contains certain minimum requisites of eligibility. In that sense, it states:

> Any program that gives away taxpayer money must include some standards to determine who qualifies for the money. Because one of the goals of almost all public subsidy programs is to make it easier for more candidates to run for office, the qualifying provisions cannot be onerous. **If it is too easy to qualify, however, the program runs the risk of losing credibility when, for instance, a marginal candidate makes a career of losing elections at public expense or simply too many candidates flood the system. Eligibility requirements may be less crucial in matching fund and rebate or credit programs than they are in block grant programs because the candidate's subsidy is subjected to a kind of ongoing market test – the candidates will benefit from public money only if they are able to raise money on their own.** Daniel, Elizabeth, "Subsidizing Political Campaigns: the Varieties and Values of Public Financing", *Brennan Center for Justice, http://.brennancenter.org/resources/*
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> Resources_cfrseries.html. (our emphasis).

In addition, once a Party is registered, it has the right to designate an Electoral Commissioner and an Alternate

Commissioner, and to participate with voice and vote in the deliberations of the State Elections Commission. Also, they have the right to have a local Commissioner in each electoral precinct and to have the support personnel that is ordinarily part of the representation of the parties in the different dependencies of the State Elections Commission. Electoral Act, as amended, Art. 1.004 et seq., 16 L.P.R.A. sec. 3004 et seq. In fact, the registration of a Party converts it in part of the governmental organism that leads the electoral process and therefore acquires quasi-public functions of great importance in our democratic system. *P.R.P. v. E.L.A.*, 115 D.P.R. 631 (1984); *Fuster v. Busó*, 102 D.P.R. 327 (1974). The challenged requirement in the case at hand provides a mechanism so the State can make sure that the groups constituting part of this directive body show that they really constitute a Party representing an important sector of the electorate with the right to participate in the deliberations of that governmental organism.

Finally, we should point out that the requirement of the notary certifying the endorsements, taking into account the history of political fraud in our jurisdiction, what it precisely seeks, is to offer a guarantee of reliability that makes it unnecessary to take the drastic measures proposed by the Civil Action Party to protect the purity of the electoral process, such as the certification of a candidate or a Party, even after the elections take place.

If we consider from the hearing, it appears, that since 1998 to the present, the Petitioners have dedicated only four hours to the effort of collecting endorsements, it is highly questionable and worrisome that through the

requested remedy, expects us to declare unconstitutional some of the sections of our electoral scheme that precisely have the purpose of avoiding the registration of parties lacking popular support.

For the reasons set forth above, we deny the Motion for Reconsideration.

The corresponding Judgment shall be entered.

IN THE SUPREME COURT OF PUERTO RICO

Partido Acción Civil

Petitioner

No. AC-1999-20

v.

Commonwealth of Puerto Rico, et al.

Respondents

Dissenting Opinion of Associate Justice Mr. Negrón-García

(In Reconsideration)

San Juan, Puerto Rico, on April 25, 2000

For its precedent value and repetitive character, this appeal goes beyond and transcends the constitutional rights of the voters who make up the Partido Acción Civil (PAC).

The burdensome legislative requirement that individually forces the voters to go to and swear before lawyers-notaries their registration endorsements, has subordinated the creation of any political party to that professional group.

It is an elitist and irritating privilege. On its face and operationally it is unreasonable and unconstitutional, because it gives in an absolute manner to this professional group, in its critical initial stage, the exclusive prerogative of giving efficacy and legal virtuality to the rights of speech, association and suffrage of the voters. *The electoral will turns into notary will.*

The result is that, inconceivably, in the Puerto Rico of today and of tomorrow, the recognition of the paternal relationship in the birth and registration of a new political party, is ultimately of a *notarial nature, not electoral.*

To hand over and leave only in the hands of lawyers-notaries such a valuable right is not justified as the only measure against fraud, as there are less onerous ones. Particularly, in the name of an imaginary and nonexistent legislative tradition that, in practice, only benefits the hegemony and perpetuity of the main political parties that have dominated the electoral and ideological stage for more than half a century.

The State cannot imprison in the privilege of a professional class these constitutional rights, or asphyxiate in a time capsule the citizens' electoral aspirations (little or big ones in its beginnings, few or many economic resources), of achieving an electoral franchise.

I

Article 3.001(3) of the current Electoral Act – Number 4 of November 15, 1978 – mandates that the endorsement of a voter promoting a new political party be performed only through a petition sworn before lawyers-notaries.[1] **Its text does not obligate, expressly or implicitly, any lawyer-notary to ministerially carry out this function.** If he, in his discretion, chooses to do so, in or outside his office, by payment of one dollar, he should thereafter prepare and submit four reports: the first one to the State Elections Commission, and another every fifteen days, again to that organism. He must also transcribe, by hand, each endorsement in his Affidavits Book, and include them in the monthly notary index, which shall be submitted to the Protocols Inspector Office. **The Electoral Act does not provide either for officials, mechanisms or alternate ways that make viable these endorsements in a different way.** ***Formerly, this absolute electoral monopoly of the professional class of lawyers-notaries did not exist; now, simply put no one else can do it, there are no other options.***

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[1] Establishes:

Any group of citizens who, with the purpose of appearing on the Elections ballot in any General elections shall be considered a "Party by Petition", if they are registered as a public party **on or before June of the election year**, by filing, before the Commission, sworn petitions for such purpose, **before notaries public admitted to the practice**. . . . , who shall receive from the Elections Commission, the amount of one (1) dollar for each valid notarized petition as fees, signed by a number of voters of no less than five (5%) percent of the total votes deposited for all the candidates to the office of Governor in the prior elections. . . . " (Our emphasis)

Discriminatory and unreasonably, the requirement is imposed only to the voters wanting to found new island-wide or local parties. **It is not demanded for independent candidates, internal primaries, presidential primaries, or plebiscites.** According to the *Report of the House Government Committee* the requirement "establishes a guarantee of veracity of the voter's intention expressed in the petition and protects the purity in the procedure of registration of parties." The Commonwealth and the State Elections Commission argue that this safeguard promotes the compelling interest of preventing fraud and of assuring that there is an authentic showing of electoral support or base.

Preventing fraud, we recognize, is a compelling interest present and applicable *to every step and stage of any electoral event*, whether they are elections (general or special), primaries, plebiscites, referenda, etc. The political parties are vehicles of expression, through which citizens show their support or opposition to the different governing programs, and at the same time, strengthen democracy by proposing candidates to public office. The constant active participation and reciprocal supervision of its members inserted in the electoral administrative structure, as representative officers, imparts trustworthiness, purity and makes possible the orderly and fair holding of the electoral events. When obtaining their franchises they obtain the status of quasi-public bodies inside the constitutional structure and in the operation of the government. Such important functions require a serious sieve that prevents a group, through fraud, obtaining these valuable prerogatives and responsibilities.

But in cases as the present one, the State has gone beyond what is necessary in its zeal and protection against fraud. In its forensic discourse – with the approval of the majority of the Court –, has inverted the values and elevated the budgetary impact that every political party represents to the category of main compelling interest. It accepts that the independent candidates are not required for each of its petitions to be sworn before lawyers-notaries.[2] As indicated, neither is it imposed to the registration formalities of the other events of an electoral nature. Nonetheless, with reference to the independent candidates it bases this difference on the fact that they do not participate in the Electoral Fund, nor do they take part in the administration of the elections. It expounds its main argument in terms of millions of dollars. (*Per Curiam*, pages 3-4).

It thus forgets that the legislative medicinal antidote against fraud is constitutionally contraindicated and cannot be administered if, as an "adverse reaction", it turns into a deadly poison against the democratic

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[2] Art. 4.027 of the Electoral Act provides, in part:

Any person filing before the State Elections Commission petitions for nominations accepted by them in an amount no less than five (5%) of the votes obtained in the last general election by all the candidates to an elective office that such person aspires, shall be deemed an independent candidate.

The independent candidates to office of Senator or Representative by Accumulation shall present petitions for nominations in an amount equal to five (5%) percent of the total votes issued for Governor in the prior general elections divided by eleven 11. Such petitions shall only be signed by voters entitled to vote for the aspired office." 16 L.P.R.A. 3177

health of the citizen electoral body, just because public funds are involved.

The electoral fraud is *malum in se* [bad in itself], because it diminishes the integrity of the vote, which is the yeast that makes our democracy grow or decrease. To avoid it, is a unquestionable compelling interest *with or without electoral funds*. Nonetheless, we reject that the constitutionality of the sole requirement of the public notary faith in the endorsements can be sustained on the basis of the Electoral Fund and the other financial and administrative consequences that fall upon the electoral apparatus. In the constellation of the constitutional values involved – freedoms of speech, association, and suffrage –, the budgetary impact, although important, is a consideration of secondary order to the attainment of an electoral franchise. **For its *subsequent* character, it cannot serve as an *a priori official excuse* to impose early, onerous and different obstacles to the arrival of new political parties.** The argument, wrongly, elevates to a directing principle the economic factor and relegates to an inferior one the right to participate in the electoral processes, which is consubstantial with the aforementioned fundamental constitutional rights.[3]

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[3] The majority (Per Curiam, pag. 9, footnote 4), pinpoints the "verbal and premature" waiver to the Electoral Fund notified by the Attorney for PAC in the Oral Hearing. We say premature because Chief Justice Andreu García stated, PAC may not waive something it is not entitled to.

II

The legislative position of mandating the requirement of endorsement before lawyers-notaries only for parties by petition, puts obstacles and contrasts eloquently with the rest of the present electoral scheme and the recent special legislation wherein the States has been interested in promoting determined electoral events: the plebiscites.

As to those events, the Legislative Assembly has never required the voters to compulsorily go before notaries. Contemporary history reflects a lax and very liberal legislation as to the endorsements, even when the new groups have received special assignments of an analogous nature to the Electoral Fund.[4] They have equally generated disbursements in the administrative structure of the State Commission. We are referring to the Laws No. 1 of December 23, 1966, No. 22 of July 4, 1993 and No. 249 of August 17, 1998 – plebiscites about

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[4] For the plebiscite of 1966, **each group accepting a representation in one of the formulas for the status** had available the amount of $385,000.00, of which $250,000.00 were to be used for general campaign and propaganda expenses; $60,000.00 for transportation of voters and the remaining $75,000.00 for administrative expenses. Act No. 1 of December 23, 1966, Art. 92.

In 1993, $2,700,000.00 for the expenses of political parties and **any certified entity, organization or group** to represent one of the formulas, which shall be divided in equal parties. Act No. 22 of July 4, 1993, Art. 28.

Lastly, the Plebiscite Act of 1998 granted $2,000,000.00 to be distributed equally amongst the political parties or **certified groups** to represent one of the columns. Art. 29, Act No. 249 of August 17, 1998.

our political status –, concerning those formulas that were not represented by the registered political parties. **For those circumstances, the Legislative Assembly encouraged and sponsored the creation of electoral groups.** One of the requirements to be complied with was **the simple presentation of endorsements *not individually sworn before notaries*.** The plebiscite corresponding to 1966 only required a **list with signatures** equal to one percent (1%) of the voters that cast votes in the preceding election for the political party that promoted the status formula to be represented by the group. This list had to be joined by **a sole affidavit** of the Chairman or any other of the directors of the concerned group to the effect that the signatures of the voters were authentic, given to achieve the desired organizational representation and that they had the addresses of each endorser.

For the 1993 plebiscite, the letter of the act only mandated a list of the endorsing voters. In the 1998 plebiscite were compelled signed endorsement petitions, equivalent to no less than 3 percent (3%) of the voters that voted in the plebiscite of 1993 for the status option that received the least number of votes in that consultation. **As a means of swearing them in was incorporated the liberal norm applicable in primaries of *ad hoc* notaries** – voters authorized by the State Commission –, **method that still survives** in Art. 4.011 of the Electoral Act:

> The primaries petition can be sworn, before officials authorized by law to take oaths, as well as by **any voter authorized by the Commission to carry out that function upon request of each primary candidate.**

> "The persons authorized to take oaths regarding the primary petitions **shall be considered as officials of the Commission for all legal purposes**, and shall keep a record of all the persons and the date in which the oath was taken. This record shall be signed and sent to the Commission at the end of the period in which the primary petitions may be filed." (Our emphasis).

It is observed then, that when it is the interest of the Legislative Assembly to promote, make viable, and give temporary representative electoral franchises (not permanent) – and support party primaries –, uses two (2) different and contradictory measures, **even when in all of them the compelling interest of avoiding fraud is identical and of equal intensity**. The same can be said about the fiscal effects. In those circumstances, that interest ceased to be important even though there was a special Electoral Fund, and the new groups had significant budgetary impacts. **The only detectable substantial difference is that it was about events that benefit the partisan interests of the three traditional political parties.**

It is inescapable to conclude that in its electoral treatment the legislative Assembly projects itself as circumstantially versatile: one face, liberal and generous, as long as it is politically convenient; the other face, grim and conservative, if it implies opening the doors to the formation of new permanent political parties.

In support of this differential treatment, the State Commission alleges that the leniency of the endorsements without lawyers-notaries is justified because the plebiscites were electoral events legislatively scheduled

for near dates when there was little time available to mandate them. The same argument expounds with respect to primaries. That, in its judgment, contrasts with the genesis of new parties, for which the voters have potentially three and a half years counting from the last election held.

The differences are more apparent than real. *The Regulation for the Procedures of Filing of Candidacies and Primaries of the Political Parties*[5] requires a candidate in primaries to gather five thousand signatures in a period of two months – from the opening of the period of filing of candidacies on July 1st of the year prior to the election year (Regulation, sec. 3.5), until September 1st of the same year (Regulation, sec. 3.6(b)). **It does not impose, however, the requirement that each one be individually notarized under the premise that this requirement would be too onerous in such a short period of time.**

In its mathematical-temporal dimension, it should be noted **that there is no significant difference between the registration of a candidate to primaries and that of a Party by Petition.** Five thousand (5,000) signatures in two months are equivalent to thirty thousand (30,000) in one year, and these, projected in a span of three and a half years – maximum term that a party by petition has to register – amount to one hundred and five thousand (105,000), amount comparable with the one required to the parties by petition.

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[5] State Elections Commission, May 26, 1999

It is unavoidable to conclude that the requirement of individual notarization of the signatures for the candidates in primaries is onerous – they are the ones who have the advantage of working inside an organized structure and a previously established group –, it is too, with more reason, for the parties by petition.

Nonetheless, the majority by subscribing the argument of the State Commission, expounds its own and peculiar formulas of distribution of notaries that the PAC could and should use to register within the "three and a half years established in the Electoral Act". To that effect, it says:

> "Using the numbers given by the legal representation of the Partido Accion Civil, that in four hours it collected and notarized thirty (30) valid endorsements, a simple mathematical calculus shows that nine (9) notaries certifying endorsements during eight 8 hours a week, would have notarized 98,280 endorsements **during a period of three and a half years, term established by the Electoral Act for the registration of the parties by petition.**
>
> Also it can be observed that in Puerto Rico there are one hundred and four (104) electoral precincts. It would be enough to use two notaries in each precinct and that each one notarize five hundred endorsements to collect 104,000 endorsements, which exceeds the number of endorsements required. **For such task, of course, they would count with the three and a half years established in the Electoral Act."** (*Per Curiam* Opinion, page 12).

The argument is dangerously anti-undemocratic. "It is the essence of the citizens' freedom to change their opinion and express so, accordingly. The electoral process is fundamentally an expression of the judgment of the voters and the same has to be changeable as are the circumstances of life in a country." *Rivera Lacourt* v. *Junta Estatal de Elecciones*, 100 D.P.R. 1023, 1029 (1971).[6]

The mathematical formulas conceived by the majority rest on a static and unreal scenario. Both have, as a starting point, the ideal that the notarization of 97,784 endorsements **begins** in the "three and a half years established in the Electoral Act." We could speculate other formulas that in different moments, and in strict arithmetic, would reflect that possibility; as a reason for deciding, we abstain. **That judicial focus mechanically time bars and freezes the constitutional rights of speech, association and suffrage to the beginning of a four-year itinerary.** It ignores the changing nature of human beings, and of the daily social events that nurture the dynamic vitality of a true democracy. **Civic movements and nucleuses like the PAC, ordinarily are not instantaneous, but product of gradual social phenomena and reactions of the daily and variable Puerto Rican reality as to the good or poor governmental work.** They can emerge immediately, as a result if an election or in any of its following years. In fact, the only restriction of a temporal nature concerning the right of a voter to change her opinion and endorse the registration of new parties, – which constitutionality is not at issue here –, we find it in

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[6] Citation taken from the brief of the General Attorney accepted in this decision.

Art. 3.002(b) of the Electoral Act establishing that the voter could not have "during the immediately preceding two (2) year period signed a petition to register another party."

In terms of four-year temporality, because of the proximity of the general elections – scheduled in Art. VI Sec. 4 of our Constitution for "the day of the month of November determined by the Legislative Assembly" –, only is valid to legislatively argue and impose a valid deadline for such registrations: currently, May 31 of the year corresponding to the general election. **But that does not deny the reality that the PAC and other groups can legitimately appear and form slowly or quickly, in any year of the four-year period, without being able to oppose to the dynamic, free and democratic civic exercise the norm of notarial exclusivity with the majority argument that they were not diligent and, instead of litigating and relying on this writ (*Per Curiam*, page 5), they sould have, to be able to achieve it, begin the registration and notarization of the 97,874 endorsements.**

III

On the other hand, the majority opinion concludes that the PAC "has not demonstrated to have a genuine interest in achieving the registration" as a party by petition. (*Per Curiam*, page 5). It bases this conclusion on several "conclusions of fact" thatwe will expound and evaluate simultaneously. We do so, aware that this Forum – as opposed to when it exercises its original jurisdiction –, is simply exercising its classical appellate power of

review, not acting as a Court of First Instance. Certainly, we will avoid falling into the temptation that the oral argument hearings – with our questions and the answers of the parties' lawyers –, turn into evidentiary ones, for which we have no authority. With this precautionary note, let us examine the factual conclusions if the majority, in light of the original record and the oral hearing.

First, the majority underlines that the PAC has collected only thirty (30) valid endorsements certified by a notary in four (4) hours. (*Per Curiam*, pages 6-7). In contrast to the majority perception, that is not demonstrative of absence of diligence, but of the onerous nature of the requirement for the voters and for the lawyers-notaries. **In the oral hearing this limited action was accredited by the existence of a powerful reason. The notary in question – Atty. Nelson Rosario-Rodriguez, legal representative of the PAC –, clarified with absolute honesty and sincerity, that the daily discharge of his other professional endeavors as a lawyer, as a means of living to comply financially with his parental and child support duties, prevented him from spending more time than the one he had used in those activities. He also stated the difficulties he had in recruiting, with no success, other lawyers-notaries. The veracity of those statements has not been questioned.**

Second, the majority emphasizes that the PAC had not obtained the electoral lists after a case in which finally this court authorized it. (*Per Curiam*, page 7). Once agains, its attorney explained that it was not done ("been done") because of the cost that entailed $1,800.00, and in awaiting for the present case to be solved. **To ascribe a lack of diligence, in all justice, how can the majority of**

the Court take the economic capacity or lack thereof to acquire them, to be one of the determining factors? The PAC requested the lists to the State Commission since May 26, 1998. In June that organism denied them to them. Subsequently, both the Court of First Instance and the Circuit of Appeals also denied them to them. It was not until September 27, 1999 – mandate sent on October 14 –, that we recognized that right. On that date, this other appeal presented on May 21 of the same year was pending. Two (2) weeks later the mandate authorizing the delivery of the lists, the majority denied the PAC, in aid of jurisdiction, the alternate remedy that they requested from voters *ad hoc* notaries. **In these circumstances and considering the cost that the lists represented; how could the decision of the PAC of postponing its acquisition, until its argument about the unconstitutionality of Art. 3.001 of the Electoral Act were solved be labeled of unreasonable or deem it as indicative of indolence?**

Third, the majority mentions the absence of "electoral strength", since the PAC did not produce a list of voters ready to endorse it. (*Per Curiam*, pages 7-8). **Since when does this requirement exist? Never!**

Finally, the majority points out that the negative of the PAC to consider and welcome other public officials, as an alternate mechanism to certify the endorsements, shows lack of interest in getting registered. (*Per Curiam*, page 10). **Regarding this matter, we have the impression that the PAC is being penalized for exercising the right to request a decree of unconstitutionality and, because of the time factor, insist in the remedy of *ad hoc* notaries.**

The judicial claim of the PAC cannot be diminished with the erroneous conclusion of the majority that "it has not demonstrated a reasonable diligence in the defense of the **concrete interest that it pretends to litigate.**" Neither with the assertion that its "electoral base" is abstract and hypothetical, because it only produced ten sworn statements and, "it has not shown us that it counts with the support of identifiable persons or groups, which every political group that aspires to become a political party and to present candidate in the whole country needs." (*Per Curiam*, page 13).

The majority introduces a new **extralegal** requirement to formulate judicial claims – that the groups credit "electoral strength" before the courts –, **paradoxically, the demands that have a bearing on the way in which to legally demonstrate that sufficiency of electoral force is precisely what is being questioned.** We say **extralegal**, because the *Electoral Act* and the *Regulation for the Registration of Parties by Petition* only demand from the groups in the process of registration a **sworn application**, stating that the applicants are duly registered voters – the name and emblem they plan to use, joined by their government platform –, and the names and addresses of those constituting its directing organ.

The "electoral strength" under the optic of the majority is a foreign and erroneously untimely criterion. The only support visualized by the Electoral Act is concretely and timely demonstrated with the numerical sample of the active voters, to wit, an amount "no less than five (5) percent of the total votes cast for all candidates for the office of Governor in the preceding general election". **That's the "electoral strength or force" that the**

Electoral Act contemplates; we can not consider any other. And certainly, to establish and prove it, every group of voters has until May 31, but with the current difficulty – from which we cannot detach ourselves –, of the requirement of individual exclusive notarial affidavit. **We cannot force the voters to cross a bridge before reaching the river.**

Intimately related, the majority concludes, viewing the performance of the Partido Renovacion Puertorriqueño (PRP) – which attained its registration for the 1984 general elections –, that the challenged provisions "are not so onerous as to make impossible that a political group demonstrating a degree of reasonable diligence gains access to the ballot." (*Per Curiam*, page 17; emphasis supplied).

If this fact reveals something, it is how burdensome the notarization requirement is. According to the *Statement Report of Parties by Petition* made available by the State Commission itself, the groups that requested to be certified begin the process of registration – under the requirement of *jurat* before a notary –, as island-wide parties by petition (eight in total), **only the PRP achieved access to the ballot.**

To qualify, without further explanation, the diligence of the PRP as a reasonable one and conducive to its registration achievement, is to abstract oneself from the political contingencies of that historic moment. See, F. Bayron Toro, *Elecciones y Partidos Politicos de Puerto Rico*, Ed. Isla, pages 307-309 (1989).

Besides the peculiar circumstances of the PRP, the truth is that the last "new political party" that could, in

fact, participate in general elections was the Partido Socialista Puertorriqueño (PSP), in 1980. **Curiously, although Art. 3.001 of the electoral Act was amended on November 15, 1978 – almost two exact years before the elections of November 1980 –, to include the requirement of notarial exclusivity, the same was not demanded to the groups that sought to register for those elections, due to its "proximity". That fact is very revealing and speaks for itself.**

After the requirement of notarial exclusivity was implemented, the three main political parties – Partido Nuevo Progresista, Partido Popular Democratico and Partido Independentista Puertorriqueño – has successfully being able to leave out other political-social movements.

> "Although the **efforts previously performed** by parties by petition and independent candidates to comply with the statutory requirements of access to the ballot are evidence of the onerous effect of the statute, these considerations should not, conclusively, determine the validity of the registration requirements. A diligent – or rich – party or candidate may gather an extraordinary number of signatures, but the collection, in itself, does not mean that the statute is constitutional. **Overemphasizing prior performances tends to punish the candidate who questions the constitutionality of the requirements and, at the same time tries to comply with the law** . . . Therefore, the fact that other candidates, in the past, have been able to satisfy the requirements of access to the ballot, should only have nominal relevance, when considering the constitutionality of a statute." Note, Nominating Petition Requirements for Third-Party and

Independent Candidate Ballot Access, 11 Suffolk U. L. Rev., 974, 990 (1977).

IV

What are the historic-legislative backgrounds of the requirement of notarial exclusivity? Is it really a tradition?

A journey begun since the first Electoral Act, No. 79 of June 25, 1919 – through the route of Act No. 2 of June 18, 1924, Act No. 3 of October 5, 1965, the Electoral Code of 1974 and, ending in the Electoral Act of 1977 –, **overwhelmingly defeats the legislative conclusion and the existence of a traditional notarial exclusivity.**

Thus, in its origin, under Sec. 37 Law No. 79 of 1919, the endorsing voters swore a statement **"before an official authorized by law to take oaths."** That included all judges and, obviously, the notary publics that would be ready to do it. The process was so quick and simple that it was not necessary to present a separate sworn statement for each signer: the certification of the official covered everyone.[7]

The possible intervention of a notary lasted scarcely five (5) years. In 1924 its involvement was eliminated and it was established that the endorsement be **"before a Puerto Rico judicial official authorized to take oaths,"** that is, the members of the judicature. It was

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[7] This text was kept unaltered in Acts Nos. 15 and 74 of May 12, 1920 and July 30, 1923, respectively.

mandated a separate certification for each oath and signature.[8] Later, in 1961 the phrasing changed and established that the petition be signed before the Chairman of the Local Elections Board, superior and district judges and judges of the peace. **The lawyers-notaries continued being excluded.** Four decades after 1924, in the year 1965, it was added and expressly mentioned, **for the first time, the notary that accepts being named by the State Elections Board.**

The lesson is clear. For more than sixty (60) years an ample legislative scheme prevailed, free from obstacles and clearly accessible to the voters of the country who could go before Judges and Chairmen of Local Boards. Because of the public nature of public officials, there is no doubt that they had to comply with that ministerial duty. The notary public was another alternative: there was no need to appear before them.

This open legislative design was closed in 1978, with the establishment of the notarial monopoly for the registration of new parties. The legislative history reveals that it was imposed to supposedly correct an "involuntary omission" occurred during the approval of the Electoral Act of 1977, consisting in that it did not provide for the swearing in of registration petitions for political parties. It was justified based on the erroneous legislative vision of "complying with a tradition in our registration process of parties by petition." (Report House of Representatives, October 24, 1978).

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[8] These provisions remained the same as Acts Nos. 74, 114, 10, 87, and 1 of July 6, 1932, June 29, 1936, August 18, 1952, June 20, 1955 and September 2, 1955, respectively.

In contrast with that legislative perception, we have seen that **there never was a "tradition of notarial exclusivity"** until it was imposed in 1978. **The historic reality always was of a more ample access through judicial, electoral officials and, for some time, "volunteer" notary public.**

We say "**volunteer** notaries" because that was the practice that prevailed during the very short period in which the Electoral Act authorized it. It allowed, as a complement to the judges and the chairmen of the local boards, that in the first stages of formation of the groups they recruit sympathetic notaries ideologically identified with their ideas and programs, **who volunteered their services and obtained commissions from the State Board.**

Upon the elimination of the opportunity of the oath before judges and electoral officials, since 1978 the Legislative Assembly created **the unsurmountable barrier of the notarial electoral monopoly**. It imposes on the endorsing voters the obligation of notarizing their signatures, nonetheless, it does not obligate any notary – neither does the Notarial Act – to do it. They rest on the sole willfulness and discretion if the lawyers-notaries to claim their rights. **The Government does not provide officials, mechanisms or alternate remedies to authenticate them in case that they refuse**. The requirement of sole endorsement before notary exists but, paradoxically, it allows its implementation to rest in the premise that they will perform this function "voluntarily."

The majority, via footnote, simplifies and sees no difficulty whatsoever to those notarial measures for

which it affirms, the groups "can rely on different methods: they can send or bring the voters to the offices of the notaries; they can have a notary join them in their campaigns of collection of endorsements; they can locate themselves in strategic places and of public access with personnel carrying the political message and requests the endorsements and simultaneously have notaries that swear in the endorsements etc." (*Per Curiam* Opinion, page 16, note 7).

If these "measures" show something, it is the state of notarial dependence. In its live application, the requirement of swearing the endorsements exclusively before notaries means that a fledgling movement will have to first convince to a considerable sector of the citizenry to give their signatures to endorse the registration of the new political party. Then, appeal to the social function of the notarial profession, persuade and make this **sub-group** of citizens – professional class with a license to practice the profession –, to decide, upon their own discretion, to offer the service of authenticating the signatures of the endorsees following some of the "methods" that the court expounded and later file the four (4) relevant reports, everything for the nominal fee of one dollar. **If it's true that they have to convince some, the others will have to be doubly convinced. Under the majority's view, is it electoral or notarial support?**

V

We talk of **convincing**, not obligating the notaries, because Art. 3 of the current Notarial Act – No. 75 of July 2, 1987 –, gives them total autonomy in the discharge of

their functions. It reads: "The notary will be authorized to exercise his function in the whole Commonwealth of Puerto Rico. In such function, **he will enjoy plenary autonomy and independence**, will perform it with impartiality and will be under the administrative direction of the Supreme Court." (Emphasis ours).

The preceding Notarial Act – No. 99 if June 27, 1956 – , did not mention such autonomy. We have not had the opportunity to express about its meaning and reach. We could venture to suggest that it refers back to the classical principle of contractual willfulness.

It does not escape to our consideration that **the notaries are not public officials**, but professionals of the Law – *People* v. *Central Cambalache*, 62 D.P.R.553 (1943) –, who perform a public function, that is, they are authorized to give legal authority and authenticity to the legal transactions and other acts and facts performed before him. Notarial Act, Art. 2.

Certainly when a notary discretionarily and voluntarily decides to obtain an appointment from the State Commission to authenticate these endorsements – paid at a rate of one dollar each –, it could be argued that such appointment confers them the limited status of public official of the State Commission and is then compelled to perform it. Nonetheless, the problem is that neither the Electoral Act nor the Notarial Act do not require such demand. **That maybe the mere legislative mention that the *jurat* be before lawyers-notaries, imply a *de iure* metamorphosis and an investiture of public officials binding them to serve a quasi-electoral function? As a**

novel legislative invention, does concept of public office notaries emerge the?

It is convenient to underline and distinguish once more the nature and dynamic practice of the Latin notary *vis a vis* the Anglo-Saxon notary public. The latter do not have the same clerical, authorizing and ethic responsibilities as the Puerto Rican notaries. Their performance as notaries is frequently incidental or secondary to a different profession or employment. The collection of signatures – actively, by going directly to the possible endorsees, or passively, by making them available almost exclusively so that the signers appear before them to authenticate their signatures –, is not particularly difficult for a citizen who is a notary public, only incidentally, to engage in the search for endorsements. But, as the PAC established before the Court of First Instance in its original **undisputed** allegations – subsequently, through affidavits from voters and lawyers-notaries that it joined in its request for reconsideration and in the oral hearing – the availability is minimal. **It was proven that it is very difficult and financially burdensome to leave their professional practice, overlapped with serious ethical responsibilities, to become a collector of signatures for one dollar.**

On the other hand, if they were compelled, less than six weeks of the deadline (May 31) for the PAC to present 97,784 endorsements, which are the criteria and who will choose those notaries? Will only those with a private practice be subjected? Will those who work in the government, agencies and other public entities be included? What schedule will be demanded from them? Can they be compelled to go out of their offices? Will they be imposed

a minimum quota of oaths? What about the notaries that because of their other professional duties and clients, as lawyers, have conflicts and refuse to notarize a signature to endorse the PAC or any other of the partisan organizations that are in the same process? If the refusal is because of not believing in the new movement or being ideologically affiliated to the existing principal parties, are they "conscientious objectors"? *Ramirez de Ferrer* v. *Mari Bras*, decided on November 18, 1997, 144 D.P.R. ___ (1997), Concurring Opinion, Associate Justice Negrón García. What remedy do the voters rejected by the notary have? To file a complaint before this Court for ethics violation?

If authenticating the signature is a ministerial duty, will the voters have to request a *mandamus* to compel them? What criteria, then, will we use to exempt specific notaries from this new obligation? Is the Government not erecting hindrances and permanent impermissible obstacles?

The list of these questions is not exhaustive; they make evident that the possible alternative of compelling legislatively or judicially the lawyers-notaries of the country to perform this electoral function as a remedy to the unconstitutionality of the statute, certainly raises more legal questions and creates more practical difficulties than it solves.

VI

We have seen that, on its face and operationally, under our Constitution and **strict judicial scrutiny**[9], we

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[9] The standard of review applied by the Federal Supreme Court to cases of access to candidates and political parties is extremely casuistic and lacks a unique criterion or systematic approach to the problem.

> "So, the Court seems to be committed to a judicial review independent from the restrictions to candidates through a test of the balance (of interests) somewhat undefined which weighs the restriction of the freedom of the voter under the First and Fourteenth Amendments against the interest of the State in helping the population to have sufficient options for the selection of public officials. The Courts shall also examine the conflict between state law and the regulation of political parties as to the eligibility of persons who participate in primary elections as voters or candidates in order to determine whether the State is unconstitutionally interfering with the freedom of association of [such] persons who have gathered to create a political party." Ronald D. Rotunda and John E. Nowak, *Treatise on Constitutional Law* (3rd edition, 1999), pgs. 710-711. (Our translation)

The main criterion as to the level of scrutiny to be applied to a limiting statute of the registration of a candidate or party is the severity of the restriction imposed on the capacity of the voter to exercise an electoral choice, or to the citizen's rights to associate and speak freely about political matters. In these cases, the strict scrutiny shall be applied.

If, on the other hand, the right to freedom of speech and association of the citizens and the free political choice of the voter are not significantly affected, a balance of interests will only be done. *Id.* pgs. 711-712. Under the Federal Constitution, the strict scrutiny is not automatically activated in cases of access to the ballot, because there is no explicit right to be stated

are facing a restrictive, onerous, discriminatory and impermissible scheme.

Our jurisprudential doctrine is abundantly generous in the interpretation of the electoral rights; we should not abandon it. As we said previously in the present case, "the ample vision of our democracy means that the exercise of the suffrage not only implies individual access to the ballots but that – with subjection to certain necessary reasonable limitations –, included in the ballots are options reflecting the ideas and conceptions of the voters of a pluralist society. Also, the freedom of association entails the right to form groups and propose candidates of their preference to participate in the electoral process. *P.S.P.* v. *C.E.E.*, 110 D.P.R. 400 (1980); *Garcia Passalacqua* v. *Tribunal Electoral*, 105 D.P.R. 49 (1976)." *Partido Acción Civil* v. *E.L.A.*, res. On October 27, 1999, 99 TSPR 163, Dissenting vote, Associate Justice Negrón Garcia.

By its nature, the registration of a political party by petition in Puerto Rico, is **undistinguishable** from the practice of proposing a particular legislation by endorsements in the United States in jurisdictions where that is allowed. **Substantially, the rights of freedom of speech, association and suffrage involved are the same and pursue an identical purpose: to force public discussion, whether of a single matter, in the case of a legislative proposal, whether of a program, a political philosophy or a set of principles in the case of the formation of a**

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as a candidate therein. *Id.* pg. 706. Therefore, the access to the ballot is based indirectly on other rights, such as freedom of speech and association and the right to vote.

party. In its essence, procedurally, both use the same method: the circulation of endorsement forms in which the voters as particular citizens, imprint their signatures to express their agreement with the inclusion of the party or the proposed legislation on the ballot. **The political parties, as the popular legislative proposals, are registered through endorsements forms.** It does not fit to differentiate – through casuistic subtleties – two practices that, in its legal essence, operation and mechanism, are undistinguishable.

The majority's distinction which rejects the persuasive value of the cases of *Meyer* v. *Grant*, 486 U.S. 414 (1987) and *Buckley* v. *A.C.L.F.*, 525 U.S. 182 (1999), invoked by the PAC) is questionable then, not to say erroneous, (*Per Curiam*, pages 13-17). The majority ignores that both validated a **completely different** affidavit requirement to the individual one and only before notary ordered by Art. 3.001(3) of our Electoral Act. **There, the legislation demanded that the gatherer of signatures for the petition or circulated proposal, swore before a notary that all the signatures in his list had been obtained legally. This requirement, more than reasonable, is a far cry from one in which each signature in a petition be notarized individually, as an onerous fashion, without any other alternative, demands our legislation.**

Nonetheless, the majority concludes that, differently from those cases, the norm of notarial exclusivity does not restrict the freedom of expression of the voters members of the PAC, because it does not limit whatsoever that "the persons that can communicate the political message outlined by such party to convince registered citizens to

endorse the registration petitions, or who can act as gatherers of endorsements." (*Per Curiam*, pages 14-15). In its judgment, they have complete freedom of speech, to spread their messages by any means, to communicate directly, requesting support and to ask the voters to bring the endorsements petitions. **It accepts, nonetheless, that the petitions and signatures of the voters have to be individually validated only before notaries.** (Id., page 16). The majority's prism disregards a primary reality: that the result, value and efficacy of the electoral registrations, product of the exercise of the right to free speech and the previous message to the voters, **depending upon and subordinated to the lawyers-notaries of Puerto Rico validly configure them in individual affidavits.**

With the requirement of notarial exclusivity in the authentication of the signatures in the electoral endorsements, the Government has established a design that delegates and leaves to the sole will of the lawyers-notaries the registration itself of any new political party. It is in their hands, because they are the only ones authorized to perform such function; nobody else can, under the law, do it. To enter the arena and achieve an electoral franchise, there is only one door which key is kept by a professional group that is not obligated to use it, notwithstanding the genuine intentions of a fledgling party to contribute to our pluralist society; even contrary to the will and right of a citizen wishing to imprint its signature on an endorsement sheet. Not only the right of the movement to enter in the political-electoral field is abridged, but also that of the citizen to record his endorsement and to, in due time, give practical political and legal effects to his vote.

In our democracy, the Legislative Assembly has, with certain limitations, ample power to guide everything concerning the elections. One of them is that it cannot directly or *indirectly*, elevate the system and continuity of the three large ideological parties through the establishment of unreasonable restrictions to the birth of new ones to the category of virtue. The demand of endorsements only before lawyers-notaries is another example of unconstitutional PARTYCRACY.

VII

The judicial road of the PAC to overcome and terminate the onerous legislative scheme of the notarial electoral monopoly has been slow, difficult and uphill. It began with its challenge on October 6, 1998 before the Court of First Instance by filing an injunction and declarative decree. It was not successful. Later it appealed and the Circuit Court of Appeals affirmed. On May 21, 1999, it knocked on the doors of this forum, and as we indicated before, on October 27, 1999, by a divided vote – with the dissent of the Associate Justice Mrs. Naveira de Rodón, Associate Justice Mr. Fuster Berlingeri and the undersigned –, they were denied of an alternate and expedited remedy in aid of our jurisdiction . . . At that moment the majority did not accept our quick remedial proposal, economic and less onerous, – equally guaranteeing against fraud –, of authorizing the endorsements to be "also before the officials of the Permanent registration Boards in each municipality." On February 25, 2000, by Opinion equally divided, the Court affirmed the dismissal of the *mandamus*. On that occasion, in view of the

majority's reiterated rejection to our position of authorizing the endorsements before the officials of the Permanent Registration Boards, **by legal imperative, we called it unconstitutional.**

Today, nobody can seriously deny that to continue demanding from the PAC only endorsements before notaries prevents it to register on or before next May 31.

In these circumstances, without further delay, as the only immediate judicial remedy we would authorize the PAC, and order the State Elections Commission to activate, the method of *ad hoc* notaries established by Art. 4.001 of the Electoral Act.

***"Tempus fugit"* (Time flies).**

[Signature]
ANTONIO S. NEGRÓN GARCÍA
Associate Justice